



Department of Defense DIRECTIVE

NUMBER 1401.3

July 19, 1985

Administrative Reissuance Incorporating Through Change 2, April 19, 1990

C, DoD

SUBJECT: Employment Protection for Certain Nonappropriated Fund Instrumentality Employees/Applicants

- References: (a) Public Law 98-94, Department of Defense Authorization Act, 1984, section 1253; 10 U.S.C. Sec.1587
- (b) DoD 1401.1-M, "Personnel Policy Manual for Nonappropriated Fund Instrumentalities," *December 1988, authorized by DoD Instruction 1401.1, November 15, 1985*
- (c) DoD Directive 7050.1, "*Defense Hotline Program*," March 20, 1987"

1. PURPOSE

This Directive provides policy and implements reference (a) that establishes protection against reprisals for certain Nonappropriated Fund Instrumentality (NAFI) civilian employees and applicants who have made protected disclosures. It sets forth responsibilities and authorities for providing such protection and prescribes operating procedures (enclosure 2).

2. APPLICABILITY AND SCOPE

2.1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Unified and Specified Commands, the Defense Agencies, hereafter referred to as DoD Components. It also applies to the Army and Air Force Exchange Service (AAFES), Navy Resale and Services Support Office, and Navy Exchanges, Marine Corps Exchanges, and any other instrumentality of the Department of Defense that pays employees from nonappropriated funds.

2.2. This Directive does not apply to employees in positions excluded from the

coverage of reference (a) by the President, based upon a determination by the President that the exclusion is necessary and warranted by conditions of good administration.

3. DEFINITIONS

Terms used in this Directive are defined in enclosure 1.

4. POLICY

4.1. It is DoD policy that NAFI employees and applicants shall be free from reprisal in making protected disclosures and that the confidentiality of employees and applicants making such disclosures shall be protected in accordance with references (a), (b), and (c).

4.2. Any civilian (appropriated or nonappropriated fund instrumentality) employee or member of the Armed Forces who has authority to take, recommend or approve any personnel action shall not, under such authority, take or fail to take a personnel action with respect to any nonappropriated fund instrumentality employee (or applicant) as a reprisal for disclosure of protected information.

5. RESPONSIBILITIES

5.1. The Inspector General, Department of Defense, (IG,DoD) shall:

5.1.1. Conduct a preliminary investigation of charges of reprisal taken in connection with a protected disclosure of fraud, waste, abuse of funds, or mismanagement to determine if there are reasonable grounds to believe that a reprisal action is being or has taken place.

5.1.2. Advise the employee or applicant and the *Director of Administration and Management, Office of the Secretary of Defense, (DA&M, OSD)*, if there is no finding of reasonable grounds and the reasons therefor.

5.1.3. If a finding of reasonable grounds is made, conduct a full investigation and provide the *DA&M, OSD*, with a report of findings of fact, conclusions, and recommendations.

5.1.4. Protect the confidentiality of employees and applicants making

protected disclosures unless the IG, DoD determines that disclosure of the employee's or applicant's identity is necessary to conduct the investigation.

5.2. The *Director of Administration and Management, Office of the Secretary of Defense, (DA&M, OSD)* shall:

5.2.1. Based upon the report of the IG, DoD, make a determination as to whether or not reprisal action has been taken as a result of a protected disclosure.

5.2.2. Advise employee or applicant of decision and reasons therefor.

5.2.3. Protect the confidentiality of employees and applicants making protected disclosures unless the disclosure of the identity of the complainant is necessary in order to carry out his function.

5.3. DoD Components shall:

5.3.1. Implement the corrective action directed by the *DA&M, OSD*, and provide the *DA&M, OSD*, with proof of compliance.

5.3.2. Publicize the content of this Directive within their activities to assure that NAFI employees or applicants fully understand the scope and application of the Directive. The publicity should include a definition of the term "protected disclosure" and the procedures for filing a complaint.

6. AUTHORITY

The *Director of Administration and Management, Office of the Secretary of Defense (DA&M, OSD)* is hereby delegated authority to:

6.1. Adjudicate complaints of reprisal based on reports submitted by the IG, DoD.

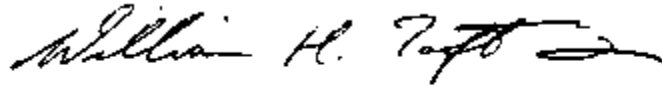
6.2. Order a stay of a personnel action, when appropriate.

6.3. Direct corrective action.

6.4. Have access to all research, reports, investigations, audits, reviews, documents, papers or any other material necessary to carry out the above authority.

7. EFFECTIVE DATE

This Directive is effective immediately.

A handwritten signature in cursive script, reading "William H. Taft, IV". The signature is written in dark ink and is positioned above the typed name.

William H. Taft, IV
Deputy Secretary of Defense

Enclosures - 2

- E1. Definitions
- E2. Operating Procedures

E1. ENCLOSURE 1

DEFINITIONS

E1.1.1. Abuse Of Authority means an arbitrary and capricious exercise of power by a high-level official or an employee that adversely affects the rights of any person or that results in personal gain or advantage to himself/herself or to preferred other persons.

E1.1.2. Corrective Action means any action deemed necessary by the *DA&M, OSD*, to make the complainant whole, such as reinstatement, promotion, reassignment, back pay; changes in Agency rules, regulations, or practices, disciplinary action against offending employee or member; referral to the U.S. Attorney General of any evidence of criminal violation.

E1.1.3. Gross Waste of Funds means unnecessary expenditure of substantial sums of money, or a series of instances of unnecessary expenditures of smaller amounts.

E1.1.4. Mismanagement means wrongful or arbitrary and capricious actions that may have any adverse effect on the efficient accomplishment of the Agency mission.

E1.1.5. Nonappropriated Fund Instrumentality (NAFI) Employee means a civilian employee of a DoD Component who is paid from nonappropriated funds and assists in providing programs for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces and authorized civilians.

E1.1.6. Personnel Action with respect to a NAFI employee (or an applicant for a position as such an employee), means:

E1.1.6.1. An appointment;

E1.1.6.2. A promotion;

E1.1.6.3. A disciplinary or corrective action;

E1.1.6.4. A detail, transfer, or reassignment;

E1.1.6.5. A reinstatement, restoration, or reemployment;

E1.1.6.6. A decision concerning pay, benefits, or awards, or concerning

education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or other action described in this subsection; and

E1.1.6.7. Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

E1.1.7. Protected Disclosure means:

E1.1.7.1. A disclosure of information by an employee or applicant that the employee or applicant reasonably believes evidences a violation of any law or regulation; or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; if such disclosure is not specifically prohibited by law and if the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

E1.1.7.2. A disclosure by such an employee or applicant to any civilian employee or member of the Armed Forces designated by law or the Secretary of Defense to receive disclosures described in paragraph E1.1.7.1., above, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation; or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety.

E1.1.8. Reasonable Grounds means there is substantial evidence that an employee or applicant made a protected disclosure, a personnel action affecting that employee or applicant was or is to be taken, and the employee or military member who recommended, took, directed, or approved the personnel action was aware or reasonably should have been aware of the protected disclosure.

E1.1.9. Whistleblower means a present employee or applicant for employment who discloses information he/she reasonably believes evidences a violation of any law, rule or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial or specific danger to public health or safety.

E2. ENCLOSURE 2

OPERATING PROCEDURES

E2.1.1. Any civilian employee or applicant of a nonappropriated fund instrumentality who reasonably believes a personnel action (including failure to take such action) as defined in item E1.1.6., enclosure 1 of this Directive was taken to effect a reprisal for making a protected disclosure may file a complaint with the DoD Hotline. Such a complaint may be filed by telephone (800) 424-9098, (202) 693-5080, or Autovon 223-5080 or by letter addressed to DoD Hotline Program, The Pentagon, Washington, DC 20301-1155.

E2.1.2. Complaints should include the name of the complainant, the specific NAFI activity and location of the activity where the alleged violation occurred, a description of the protected disclosure, the type of personnel action involved, the DoD Component, and the individual(s) believed to be responsible for the personnel action, when the alleged violation occurred, and what information suggests or evidences a connection between the protected disclosure and the retaliatory action. The complainant's identity will be protected to the extent possible.

E2.1.3. The IG, DoD, shall determine if reasonable grounds exist to believe a personnel action affecting the employee or applicant was taken as reprisal for a protected disclosure.

E2.1.4. Complaints may be referred to the appropriate DoD Component for investigation.

E2.1.5. DoD Components conducting investigations shall provide the IG, DoD, with a report of findings of facts, conclusions and recommendations.

E2.1.6. The IG, DoD, shall conduct a preliminary investigation to the extent necessary to determine if reasonable grounds exist to believe a personnel action affecting the employee or applicant was taken as a result of a protected disclosure.

E2.1.7. If the IG, DoD, determines that no reasonable grounds exist, the employee or applicant and the *DA&M, OSD*, shall be so advised and provided with the reasons for such determination.

E2.1.8. If reasonable grounds are found to exist the IG, DoD, shall conduct a

| thorough investigation and provide the *DA&M, OSD*, with a report of finding of facts, conclusions, and recommendations.

E2.1.9. If an investigation is terminated, the IG, DoD, shall notify the complainant in writing of the termination of the investigation and the reasons therefor.

| E2.1.10. Based on the report, the *DA&M, OSD*, shall render a decision and direct corrective action. The DoD Component will comply with any direction for corrective action. The employee or applicant and the DoD Component shall receive a copy of the *DA&M, OSD*, decision.